

FILED
 UNITED STATES DISTRICT COURT
 DISTRICT OF MASSACHUSETTS

RECEIPT # 61237
 AMOUNT \$ 150.00
 2005 FEB - 1
 SUMMONS ISSUED *Yes*
 LOCAL RULE 4.1
 U.S. DISTRICT COURT
 DISTRICT OF
 WAIVER FORM
 MCF ISSUED
 BY DPTY. CLK. *ROJ*
 DATE 2-1-05 *J*

CYNTHIA KENNEDY,

Plaintiff,

v.

STUART M. CHASE, in his
 individual capacity, and the
 TOWN OF DANVERS,

Defendants.

CIVIL ACTION NO.

05 10191 RCL
 MAGISTRATE JUDGE *Seabert*

COMPLAINT

INTRODUCTION

1. This is an action for damages brought by Cynthia Kennedy against the Chief of Police of the Town of Danvers Stuart Chase and the Town of Danvers for violations of the plaintiff's constitutionally guaranteed rights, along with state tort claims.

JURISDICTION

2. This action is brought pursuant to 42 U.S.C. §1983 and the First and Fourth Amendments to the United States Constitution. Jurisdiction is founded upon 28 U.S.C. §§1331 and 1343 for the federal questions. Plaintiff further invokes the supplemental jurisdiction of this Court, pursuant to 28 U.S.C. §1367 to hear and decide claims arising under Massachusetts tort law.

PARTIES

3. Plaintiff Cynthia Kennedy was at all times material to this complaint a resident of the Commonwealth of Massachusetts.

4. Defendant Stuart Chase was at all times material to this complaint the Chief of Police in the Town of Danvers. He is a citizen of the United States. His actions alleged in this Complaint were taken under color of the laws of the Commonwealth of Massachusetts and the Town of Danvers. He is sued in his individual capacity.

5. The defendant Town of Danvers is a duly organized municipal corporation in the Commonwealth of Massachusetts and was at all times relevant to the allegations of this Complaint, the employer of defendant Chase. The Danvers Police Department (“DPD”) is a department of the Town of Danvers.

FACTS

6. On September 29, 2003, Danvers police officer David Woytovich drove to Cynthia Kennedy’s home and confronted her about an unregistered vehicle outside her home. When Ms. Kennedy tried to show the notice from the DPD to explain that she had thirty days to deal with the car, Officer Woytovich cut her off and yelled that he did not want to see any paperwork she had. He then made a derogatory comment.

7. Officer Woytovich then threatened to arrest Ms. Kennedy for loitering in front of her home. Officer Woytovich continued to yell at Ms. Kennedy in front of her neighbors until she went inside her home.

8. Several of Ms. Kennedy's neighbors heard Officer Woytovich's harassing behavior, causing her embarrassment.

9. Later that day, Ms. Kennedy went to the Danvers police station in order to file a complaint against Officer Woytovich.

10. When she requested that she be allowed to speak to Chief of Police Stuart Chase, the police officer behind the desk told her to wait as the Chief was in a meeting. After approximately ten minutes, Ms. Kennedy was escorted to the Chief's office.

11. Ms. Kennedy informed Chief Chase that she would like to file a complaint against an officer who was at her house earlier in the day and attempted to explain what had happened with Officer Woytovich. Chief Chase interrupted her, questioning Ms. Kennedy's interpretation of the incident, and instructed her about Danvers Police Department policies regarding unregistered vehicles.

12. When Ms. Kennedy tried to respond, Chief Chase became upset, yelled at her and told her that the meeting was over. He ordered her to get out of his office.

13. Ms. Kennedy walked out into the hallway. Chief Chase followed her, grabbed her by the left upper arm, turned her to the right towards the stairs and told her to leave the police station.

14. As Ms. Kennedy stood in Chief Chase's grip, she asked him, "Don't I have the right to file a complaint?" Chief Chase responded, "You have the right to get out of here. There's the stairs." He squeezed her arm harder.

15. Ms. Kennedy told Chief Chase that he was assaulting her and told him to let go of her arm.

16. Instead of releasing her arm, Chief Chase told her that she was under arrest. When she asked what for, he shouted back, "For trespassing!" He then dragged her by the arm, down the hallways and the stairs, to the booking desk. Ms. Kennedy was shocked. She started to cry.

17. While Ms. Kennedy was being fingerprinted and photographed, she informed the booking officer that she wanted to file a complaint. After the booking process, a female officer provided Ms. Kennedy with a complaint form. Ms. Kennedy completed the form and gave it to the female officer who made a copy for Ms. Kennedy.

18. After that, a police officer brought Ms. Kennedy into a holding cell. Approximately two hours later, Ms. Kennedy was released.

19. As a result of the incident, Ms. Kennedy suffered bruises under her arm. She received medical treatment at the Beverly Hospital Emergency Room later that evening.

20. The criminal trespassing charge was dismissed upon request of the Commonwealth at Ms. Kennedy's first court appearance the following day.

21. Her arrest and court appearance were reported by the *Salem News*, causing her further embarrassment and public humiliation.

22. The Beverly Hospital emergency room report states that Ms. Kennedy was “very upset, tearful and anxious,” and she had a very mild contusion (“slight erythema”) on her left arm, which was sore and tender to palpitation.

23. Ms. Kennedy suffered severe emotional distress as a result of the incident. She sought and received treatment from a mental health specialist.

COUNT ONE: 42 U.S.C. §1983: CHASE

24. The above paragraphs are incorporated by reference.

25. Defendant Danvers Chief of Police Stuart Chase arrested Ms. Kennedy without probable cause.

26. Defendant Chase used excessive force on Ms. Kennedy, leaving bruises on her arms, and causing her to seek medical attention.

27. Defendant Chase retaliated against Ms. Kennedy for exercising her First Amendment rights and attempting to file a complaint against a Danvers police officer and for complaining about his holding her tightly.

28. Defendant Chase acted to discourage a citizen from filing complaints against police officers by his intimidating behavior and by falsely arresting her.

29. Defendant Stuart Chase acted with reckless disregard for plaintiff’s constitutional rights.

30. By the actions described above, defendant Chase deprived the plaintiff of the following clearly established and well-settled constitutional rights:

1. freedom from arrest without a warrant or probable cause;
2. freedom from an unreasonable seizure of her person;
3. freedom from the use of unreasonable use of force; and
4. freedom of speech.

31. As a direct and proximate result of this conduct, plaintiff suffered the injuries described above.

COUNT TWO: 42 U.S.C. §1983 Monell Claim Against TOWN OF DANVERS

32. The above paragraphs are incorporated by reference.

33. As the Chief of the Danvers Police Department, defendant Chase was the final policymaker for the Town of Danvers with regard to its police department.

34. The Town of Danvers is liable for the acts of its policymaker.

35. Chief Chase was the final decision-maker over the arrest of an individual – *i.e.*, these decisions were not subject to any meaningful review; and this power was within the realm of his grant of authority by the Town of Danvers.

36. As the Chief of Police of the Town of Danvers, Defendant Chase made a deliberate decision to arrest the Plaintiff rather than to assist her in filing a complaint.

37. Chief Chase's actions directly caused the deprivation of Ms. Kennedy's rights.

38. As a direct and proximate result of this conduct, plaintiff suffered the injuries described above.

COUNT THREE: M.G.L. C. 12, §11I: DEFENDANT CHASE

39. The above paragraphs are incorporated by reference.

40. Defendant Stuart Chase threatened and intimidated Ms. Kennedy because she expressed her intent to file a complaint against a Danvers police officer.

41. Defendant Chase assaulted Ms. Kennedy by manhandling her and grabbing her arm in an effort to threaten, intimidate and coerce her from pursuing her complaint against a police officer.

42. Defendant Chase falsely arrested Ms. Kennedy and charged her with trespassing in an effort to threaten, intimidate and coerce her from filing a complaint against a police officer and to cover up his own misconduct.

43. Defendant Chase deprived plaintiff of her rights by means of threats, intimidation and coercion.

44. As a direct and proximate result of this conduct, plaintiff suffered the injuries described above.

COUNT FOUR: FALSE ARREST/MALICIOUS PROSECUTION: CHASE

45. The above paragraphs are incorporated by reference.

46. The arrest and subsequent confinement of the plaintiff was without probable cause.

47. Defendant Chase caused criminal proceedings to be instituted against the plaintiff without probable cause and with malice as defined in state tort law.

48. The charges did not result in any criminal conviction; rather, they terminated in plaintiff's favor when they were dismissed at the first court date upon request of the prosecution.

49. By the actions described above, defendant Chase deprived the plaintiff of the clearly established and well-settled right to be free from unreasonable seizures.

50. As a direct and proximate result of this conduct, plaintiff suffered the injuries described above.

COUNT FIVE: TORT OF ASSAULT & BATTERY: CHASE

51. The above paragraphs are incorporated by reference.

52. Defendant Chase committed the common law tort of assault and battery against the plaintiff.

53. As a direct and proximate result, the plaintiff suffered the injuries as described above.

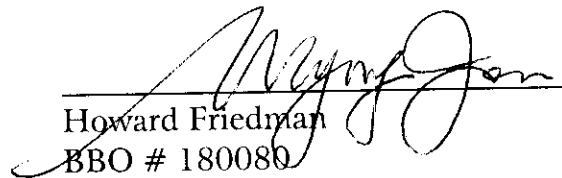
WHEREFORE, the plaintiffs request that this Honorable Court:

1. Award compensatory damages;
2. Award punitive damages against defendant Chase;
3. Award the costs of this action, including reasonable attorney's fees to the plaintiff; and
4. Award such other and further relief as this Court may deem necessary and appropriate.

JURY DEMAND

A jury trial is hereby demanded.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read "Howard Friedman", is written over a horizontal line.

Howard Friedman

BBO # 180080

Myong J. Joun

BBO # 645099

Jennifer L. Bills

BBO # 652223

Law Offices of Howard Friedman, P.C.

90 Canal Street, Fifth Floor

Boston, MA 02114-2022

(617) 742-4100

Date: February 1, 2005

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Cynthia Kennedy v. Stuart M. Chase et al.
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT
- ☒ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 930, 940, 950, 960, 970, 980, 990, 1000, 1010, 1020, 1030, 1040, 1050, 1060, 1070, 1080, 1090, 1100, 1110, 1120, 1130, 1140, 1150, 1160, 1170, 1180, 1190, 1200, 1210, 1220, 1230, 1240, 1250, 1260, 1270, 1280, 1290, 1300, 1310, 1320, 1330, 1340, 1350, 1360, 1370, 1380, 1390, 1400, 1410, 1420, 1430, 1440, 1450, 1460, 1470, 1480, 1490, 1500, 1510, 1520, 1530, 1540, 1550, 1560, 1570, 1580, 1590, 1600, 1610, 1620, 1630, 1640, 1650, 1660, 1670, 1680, 1690, 1700, 1710, 1720, 1730, 1740, 1750, 1760, 1770, 1780, 1790, 1800, 1810, 1820, 1830, 1840, 1850, 1860, 1870, 1880, 1890, 1900, 1910, 1920, 1930, 1940, 1950, 1960, 1970, 1980, 1990, 2000, 2010, 2020, 2030, 2040, 2050, 2060, 2070, 2080, 2090, 2100, 2110, 2120, 2130, 2140, 2150, 2160, 2170, 2180, 2190, 2200, 2210, 2220, 2230, 2240, 2250, 2260, 2270, 2280, 2290, 2300, 2310, 2320, 2330, 2340, 2350, 2360, 2370, 2380, 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JS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Cynthia Kennedy

Essex

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Stuart M. Chase, in his
individual capacity and the
Town of Danvers

County of Residence of First Listed

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Howard Friedman, Myong J. Joun, and Jennifer L. Bills
Law Offices of Howard Friedman, P.C.
90 Canal Street, 5th Floor, Boston, MA 02114 (617) 742-4100

Attorneys (If Known)

05 10191 RCL

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business In This State ☐ 4 ☐ 4
Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal of Business In Another State ☐ 5 ☐ 5
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause.
Do not cite jurisdictional statutes unless diversity.)

This action is brought pursuant to 42 U.S.C. §§1983 and the First and Fourth Amendments to the United States Constitution.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION DEMAND UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

JUDGE

DOCKET NUMBER

DATE

February 1, 2005

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE